

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DYLAN R. FOOTE,

Plaintiff,

v.

EL DORADO COUNTY COURT, et al.,

Defendants.

No. 2:23-cv-1103 KJN P

ORDER

Plaintiff is a county jail inmate, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the

1 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 As discussed below, plaintiff's complaint is dismissed with leave to amend.

4 Screening Standards

5 The court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
7 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
8 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
9 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
17 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
18 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
19 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
21 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
23 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
24 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
25 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
26 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
27 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
28 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.

Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

Plaintiff's Complaint

Plaintiff alleges the following. He was arrested on December 29, 2022, for attempted car jacking. On or about February 20, 2022, plaintiff's public defender's investigator discovered that the victim/witness had mental disabilities that would preclude the victim/witness from standing as a witness, based on the victim/witness' own doctor and a statement by the victim's wife. Despite the early receipt of such information, the district attorney insisted on pursuing a conviction. It was not until the district attorney cross-examined the victim/witness that the district attorney determined no conviction could be obtained. Case No. 22CRF0006 was dismissed after a pretrial hearing on or about June 14, 2022. Upon announcing the dismissal, the district attorney stated that "there is no doubt in my mind Mr. Foote committed this crime." (ECF No. 1 at 4.) Plaintiff spent five and a half months in jail based on the malicious litigation by the county and its employees, including the district attorney Casey Mandrel, and the arresting officers, as well as the ineffective assistance of public defender Kyle Metting. (Id.) Plaintiff specifically names the following as defendants: El Dorado County Court, District Attorney Casey Mandrel, and Public Defender Kyle Netting. As relief, plaintiff seeks money damages for the false imprisonment. (ECF No. 1 at 3.)

Discussion

El Dorado County Court

States, state agencies, and state officials cannot be sued in their official capacities for money damages under § 1983 because of the protection under the Eleventh Amendment of the U.S. Constitution. Kentucky v. Graham, 473 U.S. 159, 169 (1985); Hafer v. Melo, 502 U.S. 21, 26-27, 30 (1991) (clarifying that the Eleventh Amendment does not bar suits against state officials sued in their individual capacities nor for prospective injunctive relief against state

officials sued in their official capacities).

To overcome the Eleventh Amendment bar on federal jurisdiction over suits by individuals against a State and its instrumentalities, either the State must have “unequivocally expressed” its consent to waive its sovereign immunity or Congress must have abrogated it. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 99-100 (1984); Virginia Office for Protect. & Advocacy v. Stewart, 563 U.S. 247, 253-54 (2011). California has consented to be sued in its own courts pursuant to the California Tort Claims Act, but such consent does not extend to consent to suit in federal court. See Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985) (holding that Art. III, § 5 of the California Constitution did not constitute a waiver of the State’s Eleventh Amendment immunity), superseded by statute as stated in Lane v. Pena, 518 U.S. 187, 198 (1996). Further, the U.S. Congress has not abrogated, or waived, State sovereign immunity against suits under § 1983.

Here, because the El Dorado County Court is a California state agency, plaintiff’s claims against it are barred under the Eleventh Amendment. See Greater Los Angeles Counsel on Deafness, Inc. v. Zolin, 812 F.2d 1103, 1110 (9th Cir. 1987) (“state case law and constitutional provisions make clear that the Court is a state agency . . . that . . . derives its power from the State and is ultimately regulated by the State.”) (superseded by statute on other grounds). Moreover, it appears that plaintiff “can prove no set of facts in support of his claim which would entitle him to relief.” See Estelle v. Gamble, 429 U.S. 97, 106 (1976). Therefore, plaintiff’s claims against the El Dorado County Court are dismissed without leave to amend.

District Attorney Mandrel

Prosecutors are entitled to immunity when they are acting pursuant to their official role as advocate for the state and performing functions “intimately associated with the judicial phase of the criminal process[.]” Imbler v. Pachtman, 424 U.S. 409, 430 (1979); Van de Kamp v. Goldstein, 555 U.S. 335, 343-44 (2009) (district attorneys are entitled to absolute prosecutorial immunity for conduct that is “intimately associated with the judicial phase of the criminal process.”). Activities intimately connected with the judicial phase of the criminal process include dismissing claims, deciding when to prosecute, and deciding what witnesses and evidence to

1 present. Hartman v. Moore, 547 U.S. 250, 261-62 n.8 (2006); Imbler, 424 U.S. at 431 n.33.
2 Even charges of malicious prosecution, falsification of evidence, coercion of perjured testimony
3 and concealment of exculpatory evidence will be dismissed on grounds of prosecutorial
4 immunity. See Stevens v. Rifkin, 608 F.Supp. 710, 728 (N.D. Cal. 1984).

5 Here, plaintiff's allegations demonstrate that defendant Mandrel was performing duties
6 under the official role as advocate for the state and is entitled to immunity from plaintiff's claims.
7 Plaintiff's claims against Mandrel are dismissed without leave to amend.

8 Public Defender

9 Plaintiff names his public defender, Kyle Metting, as a defendant, and alleges Metting
10 provided ineffective assistance of counsel.

11 In order to state a claim under section 1983, a plaintiff must allege that: (1) defendant was
12 acting under color of state law at the time the act complained of was committed; and (2)
13 defendant's conduct deprived plaintiff of rights, privileges or immunities secured by the
14 Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 27, 535 (1981), overruled
15 on other grounds, Daniels v. Williams, 474 U.S. 327 (1986). Public defenders do not act under
16 color of state law for purposes of § 1983. Polk County v. Dodson, 454 U.S. 312, 325 (1981).

17 Plaintiff fails to state a claim under § 1983 as to defendant Metting because Metting was
18 not acting under color of state law. Plaintiff should not include Metting as a defendant in any
19 amended complaint.

20 Leave to Amend

21 Plaintiff failed to name a proper defendant and did not provide sufficient allegations for
22 the court to determine whether plaintiff can amend the complaint to state a cognizable civil rights
23 claim. However, in an abundance of caution, plaintiff is granted leave to file an amended
24 complaint.

25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
26 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g.,
27 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
28 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no

1 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
2 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
3 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
4 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
5 268 (9th Cir. 1982).

6 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
7 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
8 complaint be complete in itself without reference to any prior pleading. This requirement exists
9 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
10 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint
11 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation
12 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
13 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
14 and the involvement of each defendant must be sufficiently alleged.

15 In accordance with the above, IT IS HEREBY ORDERED that:

16 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
18 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
19 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
20 Sheriff of El Dorado County Jail, or designee, filed concurrently herewith.

21 3. Plaintiff's complaint is dismissed.

22 4. Within thirty days from the date of this order, plaintiff shall complete the attached
23 Notice of Amendment and submit the following documents to the court:

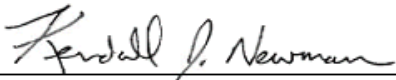
24 a. The completed Notice of Amendment; and

25 b. An original of the Amended Complaint.

26 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
27 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
28 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

Failure to file an amended complaint in accordance with this order may result in the dismissal of this action.

Dated: June 29, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

/foot1103.14n

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 DYLAN R. FOOTE,

11 Plaintiff,

12 v.

13 EL DORADO COUNTY COURT, et al.,

14 Defendants.
15

No. 2:23-cv-1103 KJN P

NOTICE OF AMENDMENT

16 Plaintiff hereby submits the following document in compliance with the court's order
17 filed _____.

18 DATED: _____

Amended Complaint

19
20
21 _____
22 Plaintiff
23
24
25
26
27
28